

1 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

2 In the Matter of:

Investigation Case Number 04-0030-PHR

3 RITA FALCON-SMITH)
4 Holder of License No. 7493)
5 For the Practice of Pharmacy)
6 In the State of Arizona,)
Respondent)

**CONSENT AGREEMENT AND ORDER
FOR CENSURE**

7 **RECITALS**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy
10 ("Board") and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5) , RITA FALCON-SMITH
11 ("Respondent"), holder of pharmacist license number 7493 to practice pharmacy in the State of
12 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
13 Order ("Consent Agreement") as a final disposition of this matter.

14 1. Respondent has read and understands this Consent Agreement and has had the
15 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity
16 to discuss this Consent Agreement with an attorney.

17 2. Respondent understands that she has a right to a public administrative hearing
18 concerning the above-captioned matter, at which hearing she could present evidence and cross-
19 examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily
20 relinquishes all right to such an administrative hearing, as well as rights of rehearing, review,
21 reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning
22 the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be
23 irrevocable.

24 3. Respondent understands that this Consent Agreement or any part of the agreement may
25 be considered in any future disciplinary action by the Board against her.

26 4. Respondent understands this Consent Agreement deals with Board Investigation

1 Case No. 04-0030-PHR involving allegations of unprofessional conduct against Respondent. The
2 investigation into these allegations against Respondent shall be concluded upon the Board's
3 adoption of this Consent Agreement.

4 5. Respondent understands that this Consent Agreement does not constitute a dismissal
5 or resolution of any other matters currently pending before the Board, if any, and does not constitute
6 any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other
7 pending or future investigation, action or proceeding. Respondent also understands that acceptance of
8 this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
9 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
10 Consent Agreement.

11 6. All admissions made by Respondent in this Consent Agreement are made solely for the
12 final disposition of this matter, and any related administrative proceedings or civil litigation involving
13 the Board and Respondent. There fore, any admissions made by Respondent in this Consent
14 Agreement are not intended for any other use, such as in the context of another regulatory agency's
15 proceedings, or civil or criminal proceedings, whether in the state of Arizona or in any other state or
16 federal court.

17 7. Respondent acknowledges and agrees that upon signing this Consent Agreement and
18 returning this document to the Board's Executive Director, Respondent may not revoke her
19 acceptance of the Consent Agreement or make any modifications to the document regardless of
20 whether the Consent Agreement has been signed by the Executive Director. Any modification to this
21 original document is ineffective and void unless mutually agreed by the parties in writing.

22 8. Respondent understands that the Consent Agreement shall not become effective unless
23 and until adopted by the Board and signed by its Executive Director.

24 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is
25 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
26 force and effect.

10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, she will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgement or other similar defenses.

11. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

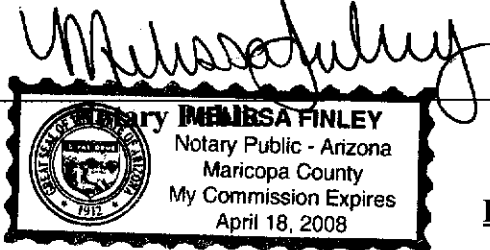
12. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its Executive Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

REVIEWED AND ACCEPTED BY:

Rita H. Falcon-Smith
RITA FALCON-SMITH

12/21/04

DATE



STATE OF ARIZONA
COUNTY OF MARICOPA } ss.

This instrument was acknowledged before me this 21 day
of Dec., 20 04, by RITA H. FALCON-SMITH
In witness whereof I herewith set my hand and official seal. with

FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described herein. Respondent admits to the following Findings of Fact:

13. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona.

14. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee of the Board under A.R.S. § 32-1901, *et seq.*

15. Respondent is the holder of pharmacist license 7493 which permits her to engage in the practice of pharmacy in the State of Arizona.

16. On September 13, 2004, the Board received a copy of a report of theft or loss of Controlled Substances (FORM DEA 106) from Respondent, pharmacist-in-charge at Fry's Pharmacy

#134, located at 6080 E. Thomas Road, Scottsdale, Arizona, 85251. (See Exhibit A -Form DEA 106 dated September 3, 2004.)

17. Respondent admitted to her employer that she had allowed a former employee access to the pharmacy on numerous Sundays in order to help the former employee study for an educational program.. On those Sundays, the former employee stole from the pharmacy various hydrocodone products.

18. Respondent failed to prevent an unauthorized person from having access to the pharmacy area by an unauthorized person as required by A.A.C. R4-23-610(B) which lists the personnel allowed in a pharmacy, to wit :

Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy interns, compliance officers, drug inspectors, peace officers acting in their official capacity, pharmacy technicians, certified pharmacy technicians, support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, certified pharmacy technicians, support personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency.

19. Under A.R.S. § 32-1927 (B), the license of any pharmacist or intern may be revoked or suspended or the pharmacist, pharmacy intern or graduate intern may be placed on probation or censured and a civil penalty of not more than one thousand dollars for each offense may be imposed by the board if the licensee :

2. Is found by the board, or is convicted in a federal or state court, of having violated federal or state laws or administrative rules pertaining to marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances.

CONCLUSIONS OF LAW

20. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the state of Arizona, under A.R.S. § 32-1901, *et seq.*

21. The conduct and circumstances described in Findings of Fact paragraph seventeen (17) and eighteen (18) above constitute grounds for disciplinary action under A.R.S. § 32-1927 (B)(2) to wit :

The license of any pharmacist or intern may be revoked or suspended or the pharmacist, pharmacy intern or graduate intern may be placed on probation or **censured** and a civil penalty of not more than one thousand dollars for each offense may be imposed by the board if the

licensee :

Is found by the board, or is convicted in a federal or state court, of having violated federal or state laws or administrative rules pertaining to marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances. (emphasis added.)

ORDER

Based upon the above Findings of Fact and Conclusions of Law and under the authority granted to the Board under A.R.S. §§ 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-122(C).

IT IS HEREBY ORDERED that:

22. As of this Consent Agreement's effective date, Pharmacist License No. 7493, which was issued to Respondent for the practice of pharmacy in the State of Arizona, is hereby

CENSURED.

23. Respondent shall successfully complete fifteen (15) contact hours (1.5 CEU's) of American Council for Pharmacy Education (ACPE) continuing education courses relating to pharmacy security or Controlled Substance accountability within six (6) months of the date of this Order. The specific courses shall be pre-approved for applicability by the Board's Executive Director.

24. The Continuing Education required in the above paragraph shall be in addition to the biennial mandatory Continuing Education required for licensure renewal.

25. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the Respondent. The issue of such hearing will be limited solely to whether this Order has been violated.

DATED and EFFECTIVE this 12th day of January, 2005

ARIZONA STATE BOARD OF PHARMACY



Hal Wand, RPh
Executive Director
Arizona State Board of Pharmacy

1 ORIGINAL of the foregoing, fully executed,
2 filed this 12th day of January, 2005, with:

3 Arizona State Board of Pharmacy
4 4425 W. Olive Avenue, #140
5 Glendale, Arizona 85302

6 Fully Executed Copy of the foregoing sent
7 via Certified US mail this 15th day of
8 January, 2005 to:

9 RITA FALCON-SMITH
10 6242 E. Hearn Road
11 Scottsdale, AZ 85254

12 Copy or the foregoing mailed
13 this 15th day of January, 2005 to:

14 Roberto Pulver
15 Assistant Attorney General
16 1275 W. Washington, CIV/LES
17 Phoenix, Arizona 85007
18 Attorney for the State

19 By: Charmaine L. Pulver

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery 1/15/05
C. Signature <u>Rita Falcon-Smith</u>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

SENDER: COMPLETE THIS SECTION	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	
Rita Falcon-Smith 6242 E Hearn Road Scottsdale AZ 85254	
2. Article Number (Copy from service label) 7000 1670 0006 4393 3498	

Domestic Return Receipt

102595-00-M-0952

PS Form 3811, July 1999

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Rita Falcon-Smith
6242 E Hearn Road
Scottsdale AZ 85254

COMPLETE THIS SECTION ON DELIVERY

- | | |
|---|--|
| A. Received by (Please Print Clearly) | B. Date of Delivery
12/13/05 |
| C. Signature
<u>Rita Falcon-Smith</u> | <input type="checkbox"/> Agent
<input type="checkbox"/> Addressee |
| D. Is delivery address different from item 1? <input type="checkbox"/> Yes
If YES, enter delivery address below: <input type="checkbox"/> No | |

- | | |
|--|---|
| Service Type | |
| <input checked="" type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail |
| <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 1670 0006 4393 0138

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952